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No. 266

IN THE
Supreme Court of the United States

October Term, 1958

STEPHEN J. KOVRAK
Appellant

v.

S. REGEN GINSBURG, Chairman, ROBERT F. LEHMAN, GEORGE P. WILLIAMS, III, Individually and as members of the Committee on Unauthorized Practice of the Law, acting for, on behalf of and by authority of the Philadelphia Bar Association,
Appellees

On Appeal from the Supreme Court of Pennsylvania, Eastern District.

JURISDICTIONAL STATEMENT

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Appellees

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment of the Supreme Court of Pennsylvania (opinion filed March 24, 1958) affirming the Decree of Injunction of the Court of Common Pleas No. 6 of Philadelphia County entered in this action on January 14, 1957, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania is reported in 392 Pa. 143, 139 A. 2d 889 (1958). The Decree of Injunction and opinion of the Court of Common Pleas No. 6 of Philadelphia County are reported in 11 D. & C. 2d 615 (1957). The record, including copies of all opinions, are attached hereto as Appendix A.

JURISDICTION

This suit in equity was brought to restrain appellant from practicing law. The final judgment of the Supreme Court of Pennsylvania was entered March 24, 1958, and notice of appeal was filed in that court on June 13, 1958. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1257 (b) and 2101 (c).

QUESTIONS PRESENTED

1. Does not Section 1 of the Pennsylvania Act of April 28, 1899, as amended by the Act of April 24, 1933 (P. L. 117 Section 1, 17 P.S. Section 1608), and as construed by the Supreme Court of Pennsylvania, violate Article III, Section 1 of the United States Constitution by making it unlawful for an attorney, counselor, solicitor, advocate and proctor in good standing of the United States District Court for the Eastern District of Pennsylvania, who has not been admitted to practice before the State courts in Pennsylvania, to maintain an office in Philadelphia and to use those titles conferred upon him by the United States as an officer of the court?

2. Does not Section 1 of the Pennsylvania Act of April 28, 1899, as amended by the Act of April 24, 1933 (P. L. 117 Section 1, 17 P.S. Section 1608), and as construed by the Supreme Court of Pennsylvania, violate Article VI, Section 2, of the United States Constitution by making it unlawful for a member in good standing of the bar of the United States District Court for the Eastern District of Pennsylvania, who has not been admitted to practice before the State courts in Pennsylvania, to maintain a law office, and to advertise the fact thereof, where such officer of the court may be served with notices, rules, and pleadings, take testimony and depositions and perform other functions relating to the discharge of the business of such United States District Court—all as provided for by the rules governing said court and its attorneys?

3. Does not Section 1 of the Pennsylvania Act of April 28, 1899, as amended by the Act of April 24, 1933 (P. L. 117 Section 1, 17 P.S. Section 1608), and as construed by the Supreme Court of Pennsylvania, violate the due process clause of the fourteenth amendment to the United States Constitution by making it unlawful for an attorney, counselor, solicitor, advocate and proctor in good standing of the United States District Court for the Eastern District of Pennsylvania, who has not been admitted to practice before the State courts of Pennsylvania, to maintain a law office in Philadelphia and to hold himself out as being entitled to practice law before said United States District Court, thereby depriving him of the means of earning a livelihood through the exercise of the privileges granted him by his federal license to practice law?

4. Does not Section 1 of the Pennsylvania Act of April 28, 1899, as amended by the Act of April 24, 1933 (P.L. 117 Section 1, 17 P.S. Section 1608), and as construed by the Supreme Court of Pennsylvania, violate the equal protection clause of the fourteenth amendment to the United States Constitution by making it unlawful for an attorney, counselor, solicitor, advocate and proctor in good standing of the United States District Court for the Eastern District of Pennsylvania, who has not been admitted to practice before the State courts in Pennsylvania, to maintain a law office in Philadelphia and to hold himself out as being entitled to practice law before said United States District Court, whereas it does not make such activity unlawful for an attorney, counselor, solicitor, advocate and proctor of the United States District Court, who has been admitted to practice before the State courts in Pennsylvania?

5. Are not the State courts of Pennsylvania—in view of Article III, Section 1 and Article VI, Section 2 of the United States Constitution—precluded from interfering by injunction with the business and conduct of the United States District Court for the Eastern District of Pennsylvania—a court wholly autonomous from such State courts—by denying to certain members of the bar of said United States District Court the right to maintain law offices, and to advertise the fact thereof, where such officer of the court may be served with notices, rules and pleadings, take testimony and depositions and perform other functions relating to the discharge of the business of such United States District Court?

6. Are not the State courts of Pennsylvania—in view of Article III, Section 1 and Article VI, Section 2 of the United States Constitution—precluded from interfering by injunction with the power of the United States District Court for the Eastern District of Pennsylvania to regulate the conduct and practice of attorneys admitted to its bar by imposing upon such attorneys additional restrictions, limitations and standards of qualification not required by said United States District Court?

STATUTES INVOLVED

"From and after the passage of this act, it shall not be lawful for any person, partnership, association, or corporation, in any county in the State of Pennsylvania, to practice law, or to hold himself, herself, or itself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney-at-law, attorney and counselor-at-law, counselor, or the equivalent in any language, in such manner as to convey the impression that he, she, or it is a practitioner of the law of this or any other State, nation, country or land, or, in any manner, to advertise that he, she, or it, either alone or together with another person or persons, has, owns, conducts, or maintains a law office, or law and collection office of any kind, for the practice of the law of this or any other State, nation, country or land, without having first been duly and regularly admitted to practice law in a court of record of any county in this Commonwealth in accordance with the regularly established rules governing such admissions: Provided, however, That nothing herein contained shall be construed as prohibiting corporations of the first class, acting in good faith and in pursuance of the purposes of their charters, from rendering, through attorneys-at-law, legal service to the members of such corporations."

Section 1 of Pennsylvania Act of April 28, 1899, as amended by the Act of April 24, 1933 (P. L. 117 Section 1, 17 P.S. Section 1608.)

"In all courts of the United States the parties may plead and conduct their own cases personally or by coun-

sel, as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." June 25, 1948, C. 646, 62 Stat. 944, amended May 24, 1949, C. 139, Section 91, 63 Stat. 103.

28 United States Code Section 1654

"1. No person shall be admitted to practice as counsel or attorney of this court, unless he shall have previously been admitted in the Supreme Court of a State, or the Supreme Court of the United States; and satisfactory evidence of moral character will also be required. He shall take the following oath or affirmation, to wit: 'I do swear that I will demean myself, as an attorney of this court, uprightly and according to law; and that I will support the Constitution of the United States.'

2. Attorneys and counselors at law, who have been admitted and are entitled to practice as such in the Supreme Court of the United States, shall be deemed members of the bar of this court, and shall have the same rights and privileges therein as such, as if they had been regularly admitted in this court."

Rule III. Admission Rule for Attorneys and Counselors, United States District Court for the Eastern District of Pennsylvania.

"Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its procedure not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate

their practice in any manner not inconsistent with these rules."

Rule 83, Federal Rules of Civil Procedure

"The Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Article III, Section 1, Constitution of the United States

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

Article VI, Section 2, Constitution of the United States

". . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . ."

Article XIV, Constitution of the United States

". . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the law."

Article XIV, Constitution of the United States

STATEMENT OF THE CASE

The statute of a State, as construed by its highest court, has denied appellant—a member for more than fourteen years in good standing of the bar of the United States District Court for the Eastern District of Pennsylvania—the rights, incident to his license as an officer of that court, to maintain an office in which he may be served with papers and perform functions relating to the business of that court and to use the titles given him by that court as its officer.

On October 15, 1943 appellant was duly admitted to practice as attorney, counselor, solicitor, advocate and proctor of the United States District Court for the Eastern District of Pennsylvania. This admission—pursuant to Rule III of that court—was based upon the fact that appellant had previously been duly admitted and qualified, following regular bar examinations, as an attorney and counselor of the United States District Court for the District of Columbia. He has not been admitted to practice before any State court of Pennsylvania; he has been admitted to the United States Court of Appeals for the District of Columbia and to the Supreme Court of the United States.

On April 18, 1956, appellees began a suit in equity against appellant in the Court of Common Pleas No. 6 of Philadelphia County to enjoin him from practicing law, representing himself to be an attorney or maintaining a law office in Philadelphia County. Appellees alleged that appellant had practiced law in violation of Section 1 of the Pennsylvania Act of April 28, 1899, as amended by the Act of

April 24, 1933 (P.L. 117 Section 1, 17 P. S. Section 1608). This statute by its terms renders it unlawful for any person in the State of Pennsylvania, without first having been admitted to practice law in a Pennsylvania State court, (1) to practice law (2) to use the title of lawyer or the equivalent so as to convey that he is a practitioner of the law either of Pennsylvania or of any other State, nation, country or land (3) to represent that he maintins a law office of any kind for the practice of law either of Pennsylvania or of any other State, nation, country or land.

In the years following his admission to the bar of the United States District Court for the Eastern District of Pennsylvania, (1) appellant maintained an office in his home, there specializing in federal taxation and immigration matters; (2) on the window of his office appeared the words, "Law Office, Stephen J. Kovrak" qualified by the words "Tax Consultant"; (3) appellant also had professional cards bearing his name, address, telephone number and the words, "Attorney at Law", qualified by the words "Proctor in Federal Taxation"; (4) appellant was listed as a "lawyer" in the Philadelphia telephone directory and was also listed in a private legal directory published by a Philadelphia bank; (5) he used stationery on which appeared his name, address, telephone number and the words, "Law Offices"; (6) in connection with two accident cases, appellant in 1955 worked to effect an adjustment with the Philadelphia Transportation Company.

The decision in the instant case can affect at least thirty-five United States District Courts having rules which also admit to practice attorneys who have not been admitted to the courts of the State in which the particular United States District Court is located but who are in good stand-

ing as members of certain other courts, for example, the highest court of any other State or the Supreme Court of the United States. (See Appendix C)

How the Federal Question Is Presented. In his answer appellant averred that he was an officer of the United States District Court for the Eastern District of Pennsylvania, having been duly admitted thereto as "attorney, counselor, solicitor, advocate and proctor"; that he practiced law in the said United States District Court; that by virtue of his admission to practice in the said United States District Court he had a right under the Constitution of the United States to maintain an office therefor (App. A, 33). He specifically stated that the aforementioned Section 1 of the Pennsylvania Act, as applied to him, contravened the provisions of the Fourteenth Amendment of the Constitution of the United States (App. A, 33). Appellant denied that he had engaged in the practice of law in Pennsylvania in violation of any valid statute.

A hearing in the Court of Common Pleas No. 6 of Philadelphia County was had before Bok, P. J., on December 6, 1956. Upon the hearing counsel for appellant urged that the State courts of Pennsylvania lacked power to enjoin appellant from practicing law in the United States District Court for the Eastern District of Pennsylvania.

President Judge Bok on January 14, 1957 decided the case in favor of appellees and entered a decree framed substantially in the language of the aforementioned Pennsylvania statute enjoining appellant in the County of Philadelphia (1) from practicing law (2) from using the title of lawyer or the equivalent so as to convey that he is a prac-

titioner of the law either of Pennsylvania or of any other State, nation, country, or land (3) from representing that he maintains a law office of any kind for the practice of the law either of Pennsylvania or of any other State, nation, country or land.

In his decision of the case President Judge Bok specifically alluded to the federal question posed by appellant's certification under federal law to practice in the United States District Court as stated in his answer and upon the hearing, namely, whether the machinery for determining qualification was left exclusively to the courts of the States. President Judge Bok stated, in effect, that the maintaining of the machinery for determining such qualification was left exclusively to the courts of the State, and that "the Federal Courts follow the State law in this regard as they do in other fields of the law which are not covered by Federal legislation." (App. A, 38).

On January 24, 1957 appellant filed exceptions which (so far as here relevant to federal questions) were: (1) to the court's conclusion of law that appellant had been unlawfully practicing law in Pennsylvania (2) to the court's conclusion of law that the aforementioned Pennsylvania statute was constitutional (3) to the action of the court in entering the decree (App. A, 42, 43).

On April 1, 1957 the court *en banc* dismissed these exceptions (App. A, 47) in an opinion also by President Judge Bok who stated that the "right of a State to provide licensing machinery for those wanting to practice law disposes of the point about the constitutionality of the [Pennsylvania] Act of April 28, 1899, P.L. 117" (App. A, 46, 47). The court further concluded that though the federal courts have power to appoint referees, masters and the like, the

federal courts have no final power to determine who shall be members of their bars:

> "We do not presume to tell the Federal Courts whom they should or should not appoint as referees, special masters, amici curiae and the like. *That is a different matter* from deciding what qualifications are needed by Pennsylvania citizens facing and affecting each other before the Bar in any court of law, State *or Federal*. In such matters we are State citizens before we are federal citizens, which is another way of saying that the States have not ceded to the Federal Government the right to qualify their lawers. [App. A, 45, 46]
>
> . . . . . .
>
> Certainly it is elementary that the Federal courts follow State substantive law in all matters where there is no opposing constitutional legislation. See Erie Railroad Co. v. Tompkins, 304 U. S. 64 (1938). Admittedly there is none in the matter of qualifying Federal attorneys by any exclusively Federal system of education or supervision. Merely because the Federal courtrooms are open does not mean that the Federal Courts have approved anyone as a qualified lawyer. *The most it means is that a man may practice there if he is qualified by local law.* If it were otherwise, the Federal Courts would have enacted rules and Congress would have passed appropriate Acts." (App A, 46). (Emphasis supplied).

Following this ruling that the federal courts are not autonomous in determining who may be their officers, appellant appealed to the Supreme Court of Pennsylvania. Upon this appeal he stated that among the questions in-

volved were: (1) whether the Pennsylvania statute is constitutional (App. A, 57) (2) whether a State may prevent a person from practicing law before a federal court within that State unless he has been admitted to practice before the courts of that State (App. A, 57). Appellant's brief specifically cited Article III, Section I of the Constitution of the United States and asserted that "the judicial power of the United States" includes the power of the federal courts over admission to, and exclusion from, practice before them; by virtue of this power there could be no disbarment by a State from practice before a federal court (App. A, 59). Appellant, in this connection stated:

> "Certainly the practice of law in a Federal court within a State is not a matter of the State's grace." (App. A, 61).

Appellant further specifically stated that the Pennsylvania statute was unconstitutional "because it encroaches upon the sovereignty of the federal government, through its courts acting under constitutional powers and in accordance with an act of Congress, to admit a person to practice law before a federal court within a State." (App. A, 62).

In the same brief appellant expressly invoked the due process clause of the Fourteenth Amendment, in this connection stating:

> "The [Pennsylvania] Act of 1899, as amended, is unconstitutional as to the appellant because it abridges his privilege to transact lawful business in the Federal Courts; and the lower Court's action is illegal because its effect is to debar the appellant from the right to practice in a Court over which the Court

below has no legal or territorial jurisdiction." (App. A, 63).

With reference to both the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States, appellant further stated in his brief:

> "Inasmuch as the lower Court's action prevents the Appellant from earning a living by practicing law, and there is no rational connection with his fitness, capacity or right to engage in such lawful occupation, or even with his residence or office address, this deprivation has grave consequences; it assumes a power in the Commonwealth of Pennsylvania to discriminate among lawyers admitted to practice before the Federal Courts, destroying the substance of that Federal right to practice for any lawyer who has not also joined or been admitted to a Bar of the State's Court." (App. A, 61, 62).

Appellant in this connection quoted the following language from the opinion of the Supreme Court of the United States in *Schware v. Board of Examiners of State of New Mexico*, 353 U. S. 232:

> "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clauses of the Fourteenth Amendment." (App. A, 60, 61).

Appellant's brief concluded as follows:

> "Admission to pratice in a state and before its Courts necessarily belongs to that State. But, under no circumstances may a State or its Courts exclude a

person from the practice of law before a Federal Court within that State. Such an act is without sanction of law and contravenes the Constitution of the United States." (App. A, 65).

The Supreme Court of Pennsylvania, by a divided vote, affirmed, expressly basing its affirmance "on the opinion of Judge Curtis Bok reported in 11 D. & C. 2d 615". Noting that the decree of the court below was "couched substantially in the language of the Pennsylvania Act of April 28, 1899, P. L. 117, as amended, 17 P. S. S. 1608 (Supp.)", the per curiam opinion of the Supreme Court of Pennsylvania stated that the decree enjoined appellant, in effect: (1) from practicing law in Philadelphia County; (2) from holding himself out to the public as being entitled to practice law in that county; (3) from advertising in that county "that he practices law or is authorized to practice law in any State, nation, country or land." The court then said, construing the Pennsylvania statute which was restated in the injunction:

> "It is readily apparent that the injunction is intended to, and does, prohibit only the maintenance of an office and the practice of law in Philadelphia County (and, of course, anywhere else in the Commonwealth of Pennsylvania)."

The Pennsylvania Supreme Court thereupon made an express determination of the scope of a license given by a United States court to practice as attorney, counselor, solicitor, advocate and proctor of such court. This State court limited the license to a single function, the actual trying of cases (App. A, 49). The injunction, stated the court,

> ". . . . in no way affects the appellant's right to engage in the practice of law in Washington D. C. or to try cases in the United States District Court for the Eastern District of Pennsylvania."

The court then expressly passed upon the constitutionality of the Pennsylvania statute, in the language of which the injunction had been couched:

> ". . . . we conclude that the injunction infringes upon no federal rights guaranteed to the appellant by either the statutes or the Constitution of the United States . . ." (App. A, 49).

Justices Bell and Musmanno dissented. The dissenting opinion of the latter concluded: (1) the majority opinion limits the operation of appellant's federal license to the physical premises of the United States Courthouse in Philadelphia, in that it not only limits appellant to the trying of cases but also prohibits his having any office; (2) appellant is thus also deprived of his federally-granted function as counselor; (3) a lawyer must have an office in which he may meet clients, witnesses, other lawyers, prepare for trial and offer advice; (4) the injunction is one "against truth" in that appellant is in fact a member of the bar of the courts of the United States; (5) appellant had not asked the right to practice law in the State courts, but he had asked the Supreme Court of Pennsylvania to reverse a decree

> ". . . which has enjoined him from exercising his right to practice law in the manner befitting a member of the bar of the United States Court for the Eastern District of Pennsylvania and the Supreme Court of the United States when those tribunals under their awe-

some seals have certified that he does possess that right. Since the court refuses to do what is so obviously required of it by the undisputed documents in the case I cannot possibly agree with the Majority's decision and I, accordingly, dissent."

THE QUESTIONS ARE SUBSTANTIAL

The questions presented by this appeal, and set forth herein in "Questions Presented", all stem from a single basic question, namely, whether a State has power to render virtually inoperative a grant by the United States of a license to act as attorney, counselor, proctor, solicitor, and advocate. This appeal in no sense challenges the police power of a State over the unauthorized practice of law. Appellant claims no right to practice law in the courts of the State. Rather, he defends the federal license of which he is properly possessed and the enjoyment of his rights under it. He is presently a member in good standing in every court to which he has been admitted. No charges have been made by anyone reflecting upon his qualifications as an attorney. The question is one of *authorized* practice —not *unauthorized* practice. The question is whether the authorization given appellant by the federal court can be abscinded by a State.

1 The decision of the Pennsylvania Supreme Court would, if accepted as correct, deny to the federal courts the "autonomous control" over their officers which the Supreme Court of the United States has recently said belongs to them. *Theard v. United States*, 354 U. S. 278, 281. Sig-

nificantly, the Pennsylvania Supreme Court's opinion recites: ". . . the decree is affirmed on the opinion of Judge Curtis Bok . . ." But the arguments of Judge Bok, which are thus provided as the basis of the Pennsylvania Supreme Court's decision, contrast the power to appoint "referees, special masters, amici curiae and the like" with the power to decide qualification of attorneys, asserting that the federal courts have power to do the former but not the latter. In the words used in the lower court's opinion, with reference to the federal courts: ". . . a man may practice there *if he is qualified by local law.*" 11 D. & C. 2d 615, 622. (Emphasis supplied). It is clear that this statement does not refer merely to qualification by *a* State, but rather by *the* State in which the particular federal court is geographically situate. It states a superseding rule which would apply regardless of any qualification which the federal court might impose upon applicants for admission to practice. It is thus clear that the lower court (and the Pennsylvania Supreme Court in adopting the lower court's reasoning) was defining constitutional *power* and not policy. The opinion asserts, not that it is the *policy* of federal courts to require State qualification, but that they have no *power* whatever to admit a person to practice in a federal court who has not been qualified by the State in which that court is located. (It is true that the Pennsylvania court does not go so far as to say that a person admitted to a federal court may not appear in that court to try cases. He may do so, but not with an office in Pennsylvania in which to prepare them for trial.)

The position of the Pennsylvania courts rests upon an asserted failure of Congress to enact statutes—and the federal courts to make rules—providing machinery for qualification of attorneys.

In the exercise of its powers given under the Judiciary Article of the Federal Constitution, the Congress established the inferior federal courts. *Martin v. Hunter's Lessee*, 1 Wheat. 304, and see 28 U. S. C. Sections 118 and 132; U. S. Const. Art. I, Section 8, cl. 9. The First Congress, in 1789, provided by statute for the admission of attorneys to practice in these courts. Act of September 24, 1789, ch. 20, Section 35. This statute, in effect today, 28 U. S. C. Section 1654, was commented upon by Mr. Justice Miller in his dissenting opinion in *Ex Parte Garland*, 71 U. S. 333, 384 (on a point on which the Court was not divided), as follows:

> "It is believed that no civilized nation of modern times has been without a class of men intimately connected with the courts, and with the administration of justice, called variously attorneys, counselors, solicitors, proctors, and other terms of similar import. The enactment which we have just cited recognizes this body of men, and their utility in the judicial system of the United States, and imposes upon the courts the duty of providing rules, by which persons entitled to become members of this class, may be permitted to exercise the privilege of managing and conducting causes in these courts. They are as essential to the successful working of the courts as the clerks, sheriffs and marshals, and perhaps as the judges themselves, since no instance is known of a court of law without a bar."

This statute expressly states that those who may appear as counsel in the federal courts are those who "*by the rules of such courts, respectively*, are permitted to manage and conduct causes therein." (Emphasis supplied). No requirement is made that the "rules of such courts" follow the

admission requirements of the State in which the particular federal court is located, or that they import a particular State's certification as a precondition to federal bar membership. And it has been held that admission of persons to practice law in a federal court is inherently an exercise of the judicial power possessed by that court. *Ex Parte Secombe,* 19 How. 9. Accordingly, the district courts of the United States have adopted, as an exercise of their *own* power over admission, conduct or disbarment, widely varied policies. Rules of some federal district courts import the standards and certifications of the particular State wherein the federal court is located. (See Appendix B). Rules of other federal district courts permit standards and certifications of States other than the State in which the federal court is located (See Appendix C).

Such rules of the federal district courts have the effect of statute. *Hicks v. Bekins Moving & Storage Co.*, 115 F. 2d 406. State laws in conflict therewith are of no effect. U. S. Const. Art. VI, Section 2. See also Federal Rules of Civil Procedure, Rule 83. Whatever be the standards, it is the fact of their adoption that is the exercise of the federal judicial power, wholly uncontrollable by State power. *Theard v. United States*, 354 U. S. 278. See also *Hertz v. United States*, 18 F. 2d 52 and the statement of Kenyon, Circuit Judge, therein at page 54:

> "The federal court has the power to admit attorneys, regardless of state statutes, and likewise to disbar them. Its rights therein are not created, limited or controlled by any state statutes."

See also *Re Isserman*, 345 U. S. 286; *Bradley v. Fisher*, 80 U. S. 335; *Selling v. Bradford*, 243 U. S. 46; *In re*

Thatcher, 190 F. 969, affd. 212 F. 801. The case of *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, cited in President Judge Bok's opinion, has no application here. Manifestly, administration of the federal court system is not shared by the States. But if Pennsylvania may be said to have power to determine the scope of appellant's license, the principle is established—and for the first time—that States may share in such administration.

Upon this appeal, therefore, it must necessarily be concluded that Rule III of the United States District Court for the Eastern District of Pennsylvania, admitting appellant to practice in that court, had and has the effect of a valid exercise of power by the United States, uncontrollable by the power of any State.

2. The Pennsylvania statute, as construed by the Supreme Court of Pennsylvania in the instant proceeding, is an unlawful interference by a State with the judicial power of the United States, in that it so delimits appellant's federally-granted license as virtually to destroy it. The opinion of that court, upholding the injunction given below, limits the enjoyment of appellant's license to the narrow activity of "trying cases" in the United States District Court for the Eastern District of Pennsylvania. By the terms of that opinion, which construed the State statute and upheld the injunction couched in the language of that statute, an officer of that federal court is debarred from maintaining an office wherein he may receive service and notices and where he may perform the manifold functions which are necessary in order to prepare a case for trial in the federal courts in Philadelphia—such as interviewing witnesses, preparing papers, conducting correspondence, taking depositions, conferring with other counsel. Thus it is apparent that the

Pennsylvania Supreme Court deprives appellant even of the single function it purports to leave him. (In this connection it is to be noted that regulations of the United States would prohibit him from conducting an office in the federal courthouse, the only premises left to him by the injunction in which to have an office. See 40 U. S. C. Section 285.)

Appellant is also effectively stripped of the function in express terms granted him by his federal license—that of counselor, or advisor. Moreover, an officer of a United States court is here expressly enjoined in Pennsylvania from representing that he is an officer thereof.

It is to be noted that the federal statute providing for federal attorneys contemplates that they will "manage and conduct" causes in the federal courts. 28 U. S. C. Section 1654. But it is plain that causes may not be managed or conducted without having an office wherein the myriad tasks relating to preparation may be performed. Various of the Federal Rules of Civil Procedure, moreover, contemplate that attorneys entitled to practice before the federal courts will have offices, for example Rule 4 (b), Rule 5 (a), Rule 11, Rule 28 (b). And Rule I (Resident Counsel Rule) of the United States District Court for the Eastern District of Pennsylvania provides, in substance, that no pleading will be accepted by the clerk of that court unless signed by a solicitor "who shall have been admitted to practice in this court, who shall be a resident of and shall maintain an office in this district." (See Appendix D). The rule significantly omits any requirement that such solicitor be admitted to practice in Pennsylvania and plainly contemplates that such solicitor shall nevertheless maintain an office within the district.

"The grant of the privilege is an idle, empty form, conveying nothing, unless it conveys the right to which the privilege is attached, and in the exercise of which its whole value consists." Marshall, C. J., in *Gibbons v. Ogden*, 9 Wheat. 1, 213. And a license granted by the United States in the exercise of one of its exclusive powers transfers to the licensee "all the right which the grantor can confer, to do what is within the terms of a license", so that a State statute which by its terms limits the scope of such license is invalid. *Id.* at 214.

But the decision of the Pennsylvania Supreme Court besides contracting the power of federal courts over their attorneys, superimposes compliance with Pennsylvania statutes as a condition precedent to effective use of licenses granted in the exercise of that power. In fine, appellant is to be accorded the full scope of his federal license, and thus permitted an office appertaining thereto and a title as "attorney", if, and only if, he is admitted under State statutes to practice in a particular county of the State, since in Pennsylvania statewide admission is not followed.

3. The Pennsylvania statute, as construed by the highest court of that State, deprives appellant of liberty and property without due process of law. The effect of the statute, as applied to appellant, is effectively to deprive him of the opportunity to earn his livelihood by practicing his profession as an officer of the federal courts in the State of his residence. As has been shown, this deprivation has no valid basis in law. "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clauses of the Fourteenth Amendment." *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U. S. 232, 238.

4. The Pennsylvania statute, as construed by the highest court of that State, denies appellant the equal protection of the law, contrary to the requirements of the Fourteenth Amendment. The effect of the statute, as applied to him, is to exclude him from the group of those members of the bar of the United States District Court for the Eastern District of Pennsylvania who may have offices and call themselves attorneys in Pennsylvania. But this exclusion—since it is without a valid legal basis—amounts to an arbitrary and unreasonable classification. It is therefore violative of the Equal Protection clause of the Fourteenth Amendment. *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U. S. 232.

Respectfully submitted,

FILINDO B. MASINO,

WILLIAM BENTLEY BALL,

Attorneys for Appellant

APPENDIX A

I. PROCEEDINGS BEFORE THE COURT OF COMMON PLEAS

(1) COMPLAINT

Plaintiffs, all of whom are duly qualified and licensed members of the Bar of the Courts of Common Pleas of Philadelphia County, Pennsylvania, individually and as members of the Committee on Unauthorized Practice of the Law, acting for and on behalf of and by authority of the Philadelphia Bar Association, a corporation, and on behalf of all other attorneys-at-law who may wish to join them, complain of defendant as follows:

1. The Philadelphia Bar Association is a nonprofit corporation with offices in City Hall, Philadelphia, composed of members of the Bar of the Courts of Common Pleas of Philadelphia County in good standing. Said corporation, by its By-Law numbered 60(1), a true copy of which is annexed hereto as Exhibit "A", authorized its Committee on Unauthorized Practice of the Law to institute and prosecute on its behalf quo warranto or other proceedings in law or equity, against persons, lay or corporate, engaged in the practice of law without first having qualified and being licensed. Plaintiffs herein are members of the Committee on Unauthorized Practice of

the Law as it is now composed and have instituted the present proceedings with the consent and approval of the Board of Governors of the Philadelphia Bar Association.

2. The public interest and the protection of the public demand that legal advice and services be rendered to the public by qualified persons, skilled and educated in the law, bound to maintain a high standard of professional ethics and qualified by character to act in a representative capacity; and persons furnishing such legal advice and services should at all times be subject to the discipline and control of the courts.

3. One of the most important functions and public services of the Philadelphia Bar Association is to secure for the public legal advice and services that meet the above standards and to that end it has set up a Committee on Admissions, a Committee of Censors to take action to maintain such standards among members of the Bar, and a Committee on Unauthorized Practice of the Law to protect the public against unqualified, unlicensed persons and corporations who may improperly and illegally engage in the practice of the law and hold themselves out as authorized to practice law.

4. If persons who are not properly qualified by skill, education and character, or corporations or employees of corporations are permitted to supply legal advice or perform legal services for the public, the safeguards for the public and protection of the public interest will be destroyed with the result that litigation will be fostered, controversy created, members of the public generally may be misled and defrauded, the ends of justice will be defeated, and legal administration and procedure brought into disrepute.

5. Plaintiffs are attorneys and counsellors at law duly admitted and qualified to practice in the Courts of record in Philadelphia County, Pennsylvania, the Superior Court and the Supreme Court of the Commonwealth of Pennsylvania; as such attorneys-at-law, and by virtue of the franchises so granted them, they have practiced law for varying periods of time in said courts in and about Philadelphia.

6. Defendant, Stephen J. Kovrak, is an individual having his principal office and place of business at 5713 Torresdale Avenue, Philadelphia, Pennsylvania.

7. Defendant, Stephen J. Kovrak, is not an attorney or counsellor at law duly admitted and qualified to practice law in a court of record of any county in this Commonwealth.

8. Defendant, Stephen J. Kovrak, has illegally and wrongfully engaged in the practice of law for a long period of time. He has, inter alia, done the following, all of which were in violation of the laws of the Commonwealth of Pennsylvania:

(a) Has practiced law in the City and County of Philadelphia;

(b) Has held himself out to the public as being entitled to practice law in the City and County of Philadelphia;

(c) Has used the title lawyer, and attorney;

(d) Has advertised on the window of his law office and in the classified section of the Philadelphia telephone directory as "attorney";

(e) Maintains a law office for the practice of law at 5713 Torresdale Avenue, Philadelphia, Pennsylvania, without first having been duly or regularly admitted to practice of law in a court of record in any county of the Commonwealth of Pennsylvania in accordance with the regularly established rules governing such admissions;

9. The defendant has practiced law in violation of the Act of April 28, 1899, P. L. 117, Section 1, as amended (17 P.S. 1608).

10. Defendant, in spite of the protests and warnings by plaintiffs, has continued to engage in the unauthorized practice of the law.

11. Said conduct of defendant was contrary to the public policy and in violation of law; tends to degrade the legal profession and bring the same and the administration of justice and law into bad repute; offends the dignity of the Courts and is contrary to the rights of, and damaging to, the plaintiffs and all other regularly qualified and licensed attorneys-at-law.

12. Unless defendant is restrained by order of this court, he will continue in his conduct of this unlawful practice, as hereinabove complained of, to the irreparable injury and damage of plaintiffs, members of the legal profession and the public generally.

WHEREFORE, plaintiffs claim they are entitled to relief as follows:

(a) That defendant be enjoined preliminarily until final hearing and permanently thereafter, from engaging in any of the activities set forth in Paragraph 8 hereof;

(b) That plaintiffs be granted such further relief as may be just and equitable under the circumstances.

(s) Robert W. Lees
4042 U. S. Court House
Philadelphia 7, Penna.

(s) Richard E. McDevitt
1500 Morris Building
Philadelphia 2, Penna.
Attorneys for Plaintiff

(Affidavit)

EXHIBIT "A"

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60. The Committee on Unauthorized Practice of the Law shall consist of not less than five members. It shall, in such cases as it deems proper, in the name of and on behalf of the Association PERFORM THE FOLLOWING FUNCTIONS:

(1) INVESTIGATE AND TAKE APPROPRIATE ACTION WITH RESPECT TO COMPLAINTS OF INSTANCES OF THE ALLEGED UNAUTHORIZED PRACTICING OF LAW, AND INSTITUTE AND PROSECUTE QUO WARRANTO OR OTHER PROCEEDINGS AT LAW OR EQUITY, AND INSTITUTE CRIMINAL PROCEEDINGS, AGAINST PERSONS, INDIVIDUAL OR CORPORATE, ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW, PROVIDED THAT NO ACTION IS TO BE INSTITUTED IN A

COURT OF RECORD WITHOUT THE PRIOR APPROVAL OF THE BOARD OF GOVERNORS.

2. GIVE ADVISORY OPINIONS TO CORPORATIONS AND TO PERSONS, OTHER THAN LAWYERS, WHO REQUEST THE COMMITTEE'S ADVICE, AS TO WHETHER AN ACTIVITY OR COURSE OF CONDUCT DOES OR DOES NOT CONSTITUTE THE UNAUTHORIZED PRACTICE OF LAW.

(3) NEGOTIATE WITH ORGANIZED GROUPS OR ORGANIZATIONS OF BUSINESS AND PROFESSIONAL PERSONS FOR THE PURPOSE OF FORMULATING JOINT STATEMENTS OR DECLARATIONS OF PRINCIPLES DEFINING THE AREAS OF ACTIVITY AND THE INTERRELATIONSHIPS OF THE BAR AND SUCH OTHER GROUPS OR ORGANIZATIONS, AND STATEMENTS OR DECLARATIONS OF STANDARDS OF CONDUCT FOR THE MEMBERS OF THE BAR AND SUCH OTHER GROUPS, WHICH STATEMENTS OR DECLARATIONS, HOWEVER, SHALL BE SUBMITTED BY THE COMMITTEE TO THE BOARD OF GOVERNORS FOR APPROVAL AND ADOPTION BEFORE THEY SHALL TAKE EFFECT.

Appendix A

(2) ANSWER

The defendant, STEPHEN J. KOVRAK, makes the following answer to the complaint filed in this matter.

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.

6. Denied. Defendant avers that he resides and is domiciled at 5713 Torresdale Avenue, Philadelphia, Pennsylvania, at which address and location he also maintains his professional office and place of business.

7. Denied. The defendant avers that he is a properly qualified legal agent, duly admitted and qualified as an Attorney and Counselor, Solicitor, Advocate, and Proctor of the United States District Court for the Eastern District of Pennsylvania on October 15, 1943, and practicing law in the said District Court, the United States District Court for the District of Columbia, the Court of Appeals for the District of Columbia, and the United States Supreme Court. Attached hereto and made part hereof are photostatic copies of the court certificates evidencing the defendant's right and privilege to practice law in the said courts. Although the United States District Court for the Eastern District of Pennsylvania is not a county or state court of record in the Commonwealth of Pennsylvania, it is located in the City and County of Philadelphia, it is a court of record and its jurisdiction extends to matters in law and equity arising under the United States Constitution and the laws made thereunder.

8. Denied for the reasons more particularly set forth above in paragraph 7. The defendant further avers that, as a duly admitted and qualified Attorney and Counselor, Solicitor, Advocate, and Proctor of the United States District Court for the Eastern District of Pennsylvania, he is not required to be admitted to practice in any city, county or state court of record of the Commonwealth of Pennsylvania; and that, by reason of his admission to practice in the United States District Court for the Eastern District of Pennsylvania, he has a constitutional right and privilege to maintain an office at his home and residence, 5713 Torresdale Avenue, Philadelphia, Pennsylvania.

9. Denied for the reasons more particularly set forth above in paragraphs 7 and 8. The defendant further avers that the Act of April 28, 1899, P. L. 117, Section 1, as amended (17 P.S. 1608) is in derogation of his rights, privilege and immunities as a citizen of the United States, and contravenes the provisions and interdictions of the 14th Amendment of the United States Constitution.

10. Denied for the reasons more particularly set forth above in paragraphs 7, 8 and 9.

11. Denied for the reasons more particularly set forth above in paragraphs 7, 8, 9 and 10.

12. Denied for the reasons more particularly set forth above in paragraphs 7, 8, 9, 10 and 11.

WHEREFORE, the defendant prays that the instant complaint be dismissed.

(Sgd.) Stephen J. Kovrak
Defendant

(Affidavit)

Appendix A

THE UNITED STATES OF AMERICA EASTERN DISTRICT OF PENNSYLVANIA

I, George Brodbeck, Clerk of the District Court of the United States for the Eastern District of Pennsylvania, do hereby certify that

Stephen J. Kovrak

was duly admitted and qualified as an Attorney and Counselor, Solicitor, Advocate, and Proctor of said District Court on the 15th day of October, A. D., 1943.

In testimony whereof, I hereunto set my hand and affix the seal of said Court, at my office in Phila. in the East. District of Penna. this 15th day of October, A. D., 1943.

George Brodbeck,
Clerk.

(Seal)

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Stephen J. Kovrak
of
Pennsylvania

was on motion of Walter C. Clephane Esquire, admitted to the Bar of the District Court of the United States for the District of Columbia on the Twelfth day of October, 1943, having taken the oath prescribed by law.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court this 23rd day of October, A. D. 1943.

C. E. Stewart,
Clerk.

(Seal)

Appendix A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Stephen J. Kovrak

was on motion first made to the court in this behalf by Mr. Wesley S. Williams duly admitted and qualified as an Attorney and Counsellor of the United States Court of Appeals for the District of Columbia, on the Sixth day of December, in the year of our Lord one thousand nine hundred and forty-three, and of the Independence of the United States of America the one hundred and sixty-eighth.

In testimony whereof I, Joseph W. Stewart, Clerk of said Court, have hereunto set my name and affixed the Seal of said Court, at the City of Washington, this Fifteenth day of August, A. D. 1946.

Joseph W. Stewart
Clerk of the United States Court of Appeals for the District of Columbia.

(Seal)

SUPREME COURT OF THE UNITED STATES OF AMERICA

Stephen J. Kovrak, Esquire
of Philadelphia, Commonwealth of
Pennsylvania

was on motion first made to the Court in this behalf by Mr. Maurice R. Weeks duly admitted and qualified as an Attorney and Counsellor of the Supreme Court of the United States on the seventeenth day of March in the year of our Lord one thousand nine hundred and forty-seven and of the Independence of the United States of America the one hundred and seventy-first.

In testimony whereof I, Charles Elmore Cropley, Clerk of said Court, have hereunto set my hand and affixed the Seal of said Court at the City of Washington, this 17th day of March in the year of our Lord one thousand nine hundred and forty-seven.

Charles Elmore Cropley
Clerk of the Supreme Court of the United States

(Seal)

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(3) ADJUDICATION

Bok, P. J.

This is a complaint in equity filed by the Committee on Unauthorized Practice of the law of the Philadelphia Bar Association, alleging that the defendant has been unlawfully holding himself out as a practising attorney and engaging in the practice of the law.

Defendant filed an answer, averring that he is admitted to practice law in the United States Supreme Court, the Court of Appeals of the District of Columbia, and the United States District Courts of the District of Columbia and the Eastern District of Pennsylvania, and that it is therefore unnecessary for him to be admitted to practice in any State court of record.

A hearing was held on December 6, 1956.

Findings of Fact

1. The plaintiffs are practising attorneys in the County of Philadelphia and are members of the Committee on Unauthorized Practice of the Law of the Philadelphia Bar Association.

2. Defendant is admitted to practice law in the United States Supreme Court, the Court of Appeals of the District of Columbia, and of the United States District Courts of the District of Columbia, and the Eastern District of Pennsylvania.

3. Defendant maintains a home and law office at 5713 Torresdale Avenue, Philadelphia. On his window are the words: "Law Offices, Stephen J. Kovrak, Tax Consultant." He also has professional cards bearing his name, address, telephone number, and the words: "Attorney at Law. Proctor in Federal Taxation."

4. Defendant has held himself out to the public in the County of Philadelphia as entitled to practice law in that County. He is listed in the Philadelphia telephone book as an attorney, and also in the legal directory published by the Tradesmen's Bank.

5. Defendant, using stationery on which appears his name, address, telephone number, and the words: "Law Offices", entered into legal negotiations with the Philadelphia Transportation Company during 1955 in connection with at least two accident cases. He has also appeared in accident litigation before Judge Lord and a jury in the United States District Court for the Eastern District of Pennsylvania.

6. Defendant has not been admitted to practice before any court of record of the Commonwealth of Pennsylvania.

DISCUSSION

Defendant's position is that he has a legal right to practice law anywhere in the Eastern District of Pennsyl-

vania with regard to any legal matter in which a Federal question was involved, no matter how remote. He also contends that the Act of April 28, 1899, P.L. 117; 17 P.S. 1608, is unconstitutional.

He cites Cummings v. Missouri, 4 Wall. 277 (1866), and Ex Parte Garland, 4 Wall. 333 (1866).

These two cases concern the loyalty oath required by the State of Missouri and by the Congress of the United States to be taken by clergymen and attorneys-at-law. The laws under scrutiny, passed during or immediately after the Civil War, prohibited such persons from following their respective professions unless they had taken the oath. These laws were held to be *ex post facto* and void.

How these cases aid defendant is hard to see. The qualifications of the professional men involved were not in question, or any law having to do with their professional ability. In fact, the Court said in the Garland case: "The legislature may undoubtedly prescribe qualifications for the office (of attorney), to which he must conform." The cited cases are in no way authority for defendant's position.

It has not been pointed out to us that the Federal Courts maintain any machinery for the examination of the professional and moral quality of applicants for admission to their bar. This is left to the Legislature and Courts of the State lying within the Federal geographical District, and the Federal Courts follow the State law in this regard as they do in other fields of the law which are not covered by Federal legislation. In fact, the United States Supreme Court has recently said that the Federal Courts do not have such machinery, and that to have it "would be to duplicate needlessly the machinery estab-

lished by the States, whose function it has traditionally been to determine who shall stand to the bar." Re Isserman, 345 U.S. 286.

This machinery is supplied in Pennsylvania by the Act of 1899, as amended by the Act of April 24, 1933, P.L. 66, Sec. 1; 17 P.S. 1608 (pocket). The Act reads as follows:

"From and after the passage of this act, it shall not be lawful for any person, partnership, association, or corporation, in any county in the State of Pennsylvania, to practice law, or to hold himself, herself, or itself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney-at-law, attorney and counsellor-at-law, counsellor or the equivalent in any language, in such manner as to convey the impression that he, she, or it is a practitioner of the law of this or any other state, nation, country or land, or, in any manner, to advertise that he, she, or it, either alone or together with another person or persons, has, owns, conducts, or maintains a law office, or law and collection office of any kind, for the practice of the law of this or any other State, nation, country or land, without having first been duly and regularly admitted to practice law in a court of record of any county in this Commonwealth in accordance with the regularly established rules governing such admissions: Provided, however, That nothing herein contained shall be construed as prohibiting corporations of the first class, acting in good faith and in pursuance of the purposes of their charters, from rendering, through attorneys-at-law legal service to the members of such corporations."

This language is wholly clear. The Act was held constitutional in Commonwealth v. Branthoover, 24CC 353:

48 Pitts. 267 (1901), and I see no reason to hold otherwise. The case of Bradwell v. Illinois, 16 Wall. 130 (21 L. Ed. 442 (1872)) says flatly that the right to practice law in the State Courts is not a privilege or immunity of a citizen and that the State's right to regulate practice in the State is one of those powers that was not transferred to the Federal Government. This case is cited in Christy Case, 362 Pa. 347 (1949).

In arguing that he may legally handle any case in which a Federal question appears, however remotely, defendant destroys his own case, since if taxation is not at least remotely connected with quite all legal matters, the fundaments of due process under the Federal Constitution would complete the list.

The only other possible point is whether a Chancellor may enjoin a crime, since the unauthorized practice of the law is made a misdemeanor under the Act of 1899. This has been answered affirmatively in Boggs v. Werner, 372 Pa. 312 (1953).

CONCLUSIONS OF LAW

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1. Plaintiffs are proper parties plaintiff.

2. Defendant has been unlawfully practising law in the Commonwealth.

3. The Act of April 28, 1899, P.L. 117 is constitutional.

4. Equity has jurisdiction to enjoin defendant.

5. Defendant should be enjoined from further unlawful practice of the law within the County of Philadelphia.

Appendix A

DECREE NISI

And now, this 14th day of January, 1957, upon consideration of the foregoing case, it is ordered, adjudged, and decreed as follows:

1. Defendant, Stephen J. Kovrak, is hereby permanently enjoined, in the County of Philadelphia, from practising law; from holding himself out to the public as being entitled to practice law; from using or advertising the title of lawyer, attorney-at-law, attorney and counsellor-at-law, counsellor, or the equivalent in any language, in such manner as to convey the impression that he is a practitioner of the law of this or any other State, nation, country, or land; or in any manner from advertising that he, alone or together with other persons, has, owns, conducts, or maintains a law office, or a law and collection office of any kind for the practice of the law of this or any other State, nation, country, or land; without having hereafter been duly and regularly admitted to practice law in a court of record of the County of Philadelphia in accordance with the regularly established rules governing such admissions.

2. Defendant shall pay the costs.

By the Court,
[Bok,]
P.J.

Time of entry 3:30 p.m.

Appendix A

(4) DEFENDANT'S EXCEPTIONS TO TRIAL JUDGE'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE NISI

AND NOW, January 24, 1957, the Defendant excepts to the findings of fact and law, and Decree Nisi, as follows:

1. Defendant excepts to the Court's fourth finding of fact, which is as follows:

> "4. Defendant has held himself out to the public in the County of Philadelphia as entitled to practice law in that County. He is listed in the Philadelphia telephone book as an attorney, and also in the legal directory published by the Tradesmen's Bank."

2. Defendant excepts to the Court's second conclusion of law, which is as follows:

> "2. Defendant has been unlawfully practising law in the Commonwealth."

3. Defendant excepts to the Court's third conclusion of law, which is as follows:

> "3. The Act of April 28, 1889, P.L. 117 is constitutional."

4. Defendant excepts to the Court's fourth conclusion of law, which is as follows:

> "4. Equity has jurisdiction to enjoin defendant."

5. Defendant excepts to the Court's fifth conclusion of law, which is as follows:

> "5. Defendant should be enjoined from further unlawful practice of the law within the County of Philadelphia."

6. Defendant excepts to the action of the Court in entering the following Decree Nisi:

"And now, this 14 day of January upon consideration of the foregoing case, it is ordered, adjudged, and decreed as follows:

1. Defendant, Stephen J. Kovrak, is hereby permanently enjoined, in the County of Philadelphia, from practising law; from holding himself out to the public as being entitled to practice law; from using or advertising the title of lawyer, attorney-at-law, attorney and counsellor-at-law, counsellor, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law of this or any other State, nation, country, or land; or in any manner from advertising that he, alone or together with other persons, has, owns, conducts, or maintains a law office, or a law and collection office of any kind for the practice of the law of this or any other State, nation, country, or land; without having hereafter been duly and regularly admitted to practice law in a court of record of the County of Philadelphia in accordance with the regularly established rules governing such admissions.

2. Defendant shall pay the costs."

Filindo B. Masino
Attorney for Defendant

Appendix A

(5) OPINION

Bok, P. J.

It is necessary to add only a few observations to the Chancellor's adjudication, to which defendant has filed exceptions.

There are certain activities that are preeminently local in nature and proper for the State to pass upon. They concern the neighbors and the community's customs and sense of values, and are clearly not among those matters of general concern which can be said to have been originally ceded to the central government by the States. Among such things are marriage and divorce, the keeping of records, the qualifications for selling real estate and for teaching, the size of lobsters and the number that can legally be taken, who may practice the professions and things of like nature.

Cases to this effect, anent the law, and in addition to those cited by the Chancellor, are Application of New York County Lawyers Association (In re Bercu), 273 N. Y. App. Div. 524 (1948); Chicago Bar Association v. Kellogg, 18 Unauthorized Practice News (No. 2), p. 18; Petition of Kearney, 63 So. 2nd 630 (1953), in which the Supreme Court of Florida refused to permit a member of the Bars of the United States Supreme Court, of the United States Tax Court, and of the United States Treasury Department, to practice in Florida, even as a "federal tax counsel"; In Re Summers, 325 U. S. 561 (1945); In Re Bailey, 50 Montana 356 (1915); Re Morse, 98 Vermont 85 (1924); Berk v. State, 225 Ala. 324 (1932).

Appendix A

The right to practice law in State courts is not such a privilege or immunity as is guaranteed by the Fourteenth Amendment; In re Lockwood, 154 U.S. 116 (1893); cited in Christy Case, 362 Pa. 347, 352 (1949).

The practice of law is not open to all and sundry, nor is it an inherent or vested right. It is a personal privilege subject to exacting tests as to moral character and mental grasp of legal principles. The lives, liberties, and property of the public are at stake, and the State may attach conditions to an attorney's license aimed at the public's protection: Re Co-operative Law Co., 198 N. Y. 479 (1910); Yeiser v. Dysant, 267 U. S. 540 (1925).

When a stranger comes to our community he must meet the standards set out by our people, just as our citizens must expect to meet the local standards if they go elsewhere to live and work. No case has been suggested to us which holds that membership in the Bar of the United States Supreme Court entitles an attorney to practice anywhere in the United States without reference to local State requirements. If we are not obliged to accept the man from Oregon merely because he may practice before the Supreme Court, neither should we have to accept the stranger from Pike County as a practicing lawyer merely because it is also within the Eastern District of Pennsylvania.

We do not presume to tell the Federal Courts whom they should or should not appoint as referees, special masters, amici curiae, and the like, for the prosecution of their work as they see it. That is a different matter from deciding what qualifications are needed by Pennsylvania citizens facing and affecting each other before the Bar in any court of law, State or Federal. In such matters we are

State citizens before we are federal citizens, which is another way of saying that the States have not ceded to the Federal Government the right to qualify their lawyers.

It may be that the whole question is one of administrative liaison between the keepers of the roll of attorneys in the two Court systems. Certainly it is elementary that the Federal Courts follow State substantive law in all matters where there is no opposing constitutional legislation. See Erie Railroad Co. v. Tompkins, 304 U. S. 64 (1938). Admittedly there is none in the matter of qualifying Federal attorneys by any exclusively Federal system of education or supervision. Merely because the Federal courtrooms are open does not mean that the Federal Courts have approved anyone as a qualified lawyer. The most it means is that a man may practice there if he is qualified by local law. If it were otherwise, the Federal Courts would have enacted rules and Congress would have passed appropriate Acts.

Defendant argues that the Chancellor erred in finding that he was practicing State law. He asserts that he was practicing Federal law only. The distinction is so dim that we think none exists. As the Chancellor has pointed out, what with only such Federal questions as taxation and basic due process, defendant would have a large field in which to practice. The real point concerns practicing law of any kind and being subject to regulation as to mental and character fitness in the public interest.

On the point of our right to enjoin a crime, there is nothing to add except, in addition to Boggs v. Werner, 372 Pa. 312 (1953), to cite Childs v. Smeltzer, 315 Pa. 9 (1934).

What has been said earlier about the right of a State to provide licensing machinery for those wanting to prac-

tice law disposes of the point about the constitutionality of the Act of April 28, 1899 P.L. 117.

By the Court,
[Bok,]
P. J.

Filed April 1, 1957.

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(6) FINAL DECREE VERBATIM

April 1, 1957, Exceptions Dismissed.

Appendix A

IN THE SUPREME COURT OF PENNSYLVANIA

Eastern District

No. 278 January Term, 1957

S. Regen Ginsburg, Chairman, et al., Individually and as members of the Committee on Unauthorized Practice of Law of the Philadelphia Bar Association

v.

Stephen J. Kovrak

Appeal from the Decree of Court of Common Pleas No. 6 of Philadelphia County, No. 5458 March Term, 1956 Entered April 1, 1957

II. OPINION OF THE SUPREME COURT OF PENNSYLVANIA

Opinion Per Curiam, Filed: March 24, 1958:

The Decree of the court below, couched substantially in the language of the Act of April 28, 1899, P. L. 117, as amended, 17 PS §1608 (Supp.), enjoins the appellant, in effect: (1) from practicing law in Philadelphia County; (2) from holding himself out to the public as being entitled to practice law in that county; (3) from advertising in that county that he practices law or is authorized to practice law in any state, nation, country or land. This injunction applies only so long as the appellant fails to secure admission to practice in a court of record in Philadelphia County.

It is readily apparent that the injunction is intended to, and does, prohibit only the maintenance of an office and the practice of law in Philadelphia County (and, of course, anywhere else in the Commonwealth of Pennsyivania). It in no way affects the appellant's right to engage in the practice of law in Washington, D. C. or to try cases in the United States District Court for the Eastern District of Pennsylvania or in any other federal court or jurisdiction where he may be entitled to practice.

For this reason we conclude that the injunction infringes upon no federal rights guaranteed to the appellant by either the statutes or the Constitution of the United States and, accordingly, the decree is affirmed on the opinion of Judge Curtis Bok reported in 11 D. & C. 2d 615.

Mr. Justice Musmanno files a dissenting opinion in which Mr. Justice Bell concurs.

III. DISSENTING OPINION

Musmanno, J., Filed: March 24, 1958:

On October 12, 1943, Stephen J. Kovrak was admitted to the Bar of the District Court of the United States for the District of Columbia.

On October 15, 1943, he was "duly admitted and qualified as an Attorney and Counsellor, Solicitor, Advocate, and Proctor," of the United States Court of Eastern Pennsylvania.

On December 6, 1953, he was "duly admitted and qualified as an Attorney and Counsellor" of the United States Court of Appeals for the District of Columbia.

On March 17, 1947, he was "duly admitted and qualified as an Attorney and Counsellor of the Supreme Court of the United States."

Despite the impressive and documentarily established fact that Stephen Kovrak is thus duly qualified to practice law in four United States Courts, including the highest tribunal in our country, the Court of Common Pleas No. 6 of Philadelphia County has issued an injunction restraining him from practising law in Philadelphia, and declaring further that he must not hold himself out as a lawyer, as an attorney, or as a counsellor, "or the equivalent in any language, in such manner as to convey the impression that he is a practitioner of the law of this or any other State, nation, country, or land."

Injunctions are intended to strike at evil, prohibit wrong, interdict aggression, and prevent trespass. But this injunction is stultification carried into the hinterland of incredible extravaganza. This is an injunction against Truth!

It is not denied that Stephen Kovrak is a member of the bar of the Supreme Court of the United States. Is the United States not a nation, country or land?

It is not denied that Kovrak is an attorney and a counsellor. The clerk of the United States Court for the Eastern District of Pennsylvania has so certified with the seal of the United States. What right does a Court of Common Pleas have to say that Kovrak may not use a title or designation conferred upon him by a Court of the United States of America?

The Pennsylvania courts may prevent Kovrak from practising law in the Pennsylvania courts, but they cannot,

under the Constitution of the United States, prevent him from practising law in such United States Courts as have admitted him to practice."

The Fourteenth Amendment to the Constitution of the United States provides inter alia:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

In the case of Schware v. Board of Bar Examiners, 353 U. S. 232, 238, decided May 6, 1957, the Supreme Court of the United States said:

> "A State cannot exclude from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment... Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory."

In a Concurring Opinion, joined in by Justices Clark and Harlan, Justice Frankfurter wrote:

> "Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on

---

* In a brief filed by the Pennsylvania Bar Association this Court's attention is called to the Canons of Ethics of the American Bar Association. Canons of ethics do not have the force or effect of law; they constitute a code of high principles which various bar associations believe should be adopted and followed by attorneys. Because of their general expression, however, these canons are subject to exceptions since they cannot equitably or justly cover and fit every unusual situation which may arise.

a consideration that offends the dictates of reason offends the Due Process Clause." (p. 249)

In attempted justification of its decree the Court of Common Pleas No. 6 said that "There are certain activities that are preeminently local in nature and proper for the State to pass upon." Among those things which the lower Court declares the State passes upon are:

> "Marriage and divorce, the keeping of records, the qualifications for selling real estate and for teaching, the *size of lobsters* and the number that can legally be taken, *who may practice* the professions, and *things of like nature*." (Emphasis supplied)

The equating of regulating the size of lobsters with the practice of the law is indeed startling. But more startling than that is the idea that the State can regulate the size of lobsters. The size of lobsters is left pretty much to the parental solicitude of Mother Nature and Father Time. I presume that in speaking of lobsters, the learned Chancellor was referring to the Act of June 24, 1939, P.L. 872, section 699.7, added May 21, 1943, P. L. 281, section 1, which provides:

> "Whoever captures, takes or has in his possession, any lobster measuring less than three and one-eighth inches (3 1 8") from the rear of the eye socket along a line parallel to the center line of the body shell (carapace) to the rear end of the body shell (carapace) shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine not exceeding fifty dollars ($50) and in default of the payment of such fine and costs shall be sentenced to imprisonment not exceeding thirty (30) days."

But what the capturing or carrying in one's pocket or other receptacle of a lobster measuring less than 3 1/8" from rear orbicular socket to posterior carapace has to do with practising law in the courts of Philadelphia, the Chancellor did not specify.

His reference to the case of Re Isserman, 345 U.S. 286 is more in keeping with the subject matter but it is still not determinative of the issue before us because the Isserman case had to do with the disbarment of a lawyer by the New Jersey courts after proved misconduct in Court. Stephen Kovrak has not been disbarred by any Court, he has not even been charged with misconduct, no one has complained that he lacks professional equipment and moral character, and yet he is being deprived of his profession, he is enjoined from announcing what is true, namely, that he is a lawyer, that he is a proctor, that he is an attorney at law—all duly certified to by the United States Court of the Eastern District of Pennsylvania, over which the Court of Common Pleas or this Court has no jurisdiction whatsoever.

If Stephen Kovrak walks or drives down to the Federal Courts Building at the corner of Ninth and Market Streets in Philadelphia, and enters a courtroom, he may address the Judge on the bench: "If the Court please, I represent John Doe in the case of Doe versus New Mexico Sulphur Company. May I proceed to trial?" And there will be no one to say to him: "Mr. Kovrak, you have no right to practise in this Court." On the contrary, he will be shown every courtesy, he will be allowed to select a jury, if it is a jury case, he will call his witnesses, and in due time make a summation on the facts, and eventually he will be entitled to be paid for his services.

But the injunction of the Court of Common Pleas, which has been affirmed by this Court, prohibits Kovrak from practising law in Philadelphia. Is the building at 9th and Market Streets not in Philadelphia?

The lower Court's Opinion, which has been adopted by this Court as its own, says:

> "It has not been pointed out to us that the Federal Courts maintain any machinery for the examination of the professional and moral quality of applicants for admission to their bar."

But surely it must be known that in the District of Columbia, where Kovrak was first admitted to practise law, the authorities conduct law examinations for applicants to the bar just as the State Board of Law Examiners in Pennsylvania conducts examinations. Surely it must be known that no one will be admitted to practise law in the District of Columbia, or Hawaii, or Alaska, or any other territory of the United States without its having been affirmatively demonstrated that the applicant has moral quality.

The lower Court says:

> "In arguing that he may legally handle any cause in which a Federal question appears, however remotely, defendant destroys his own case, since if taxation is not at least remotely connected with quite all legal matters, the fundaments of due process under the Federal Constitution would complete the list."

This argument is not as clear as the illustration of the lobsters but I must say, with all respect, that it is equally as ineffective. The defendant does not claim that he has

a right to practise law in any State court, on any matter, whether it involves a Federal question or not.

This Court, interpreting the decree entered in the Court below, concedes that the injunction does not enjoin Kovrak from trying cases in the United States Court for the District of Western Pennsylvania. But the practice of the law is not limited to the trial of cases in court. In fact, it is generally known that no trial lawyer, even the most active practitioner, in point of hours, spends as much time before Court and Jury as he must devote to his office. A lawyer does not practise law in a vacuum. In order to prepare for trial, he must have an office in which to meet with his client and witnesses and, if necessary to confer with opposing lawyers.

It cannot be questioned that Kovrak is authorized by law to offer advice in connection with Federal matters. Where is he to offer this advice? Since the injunction denies him the right to have an office, the only place where he could counsel with those seeking his assistance would be on the street and in the public square. And would this comport with the dignity which should always go with a member of the bar of a United States Court?

The Opinion of the lower Court which has been adopted by the Majority here, says that:

> "The right to practise law in State courts is not such a privilege or immunity as is guaranteed by the Fourteenth Amendment."

One of the most difficult steering processes in legal navigation is to hold to the channel of a definitive issue. Consequently, it does not help us in the review of an adjudicated cause when the fact-finding tribunal decides

against a party on an approved principle of law which that party does not controvert. Kovrak does not ask for the right to practise law in the State courts, or even to practise State law, neither of which, of course, he is entitled to do. What he does ask for is that this Court reverse the decision of the Court of Common Pleas which has enjoined him from exercising his right to practise law in the manner befitting a member of the bar of the United States Court for the Eastern District of Pennsylvania and the Supreme Court of the United States when those tribunals under their awesome seals have certified that he does possess that right. Since this Court refuses to do what is so obviously required of it by the undisputed documents in the case I cannot possibly agree with the Majority's decision and I, accordingly, dissent.

Justice Bell joins in this dissent.

IV. APPELLANT'S BRIEF ON APPEAL TO THE SUPREME COURT OF PENNSYLVANIA

I. STATEMENT OF QUESTIONS INVOLVED

1. Is not the admission to practice law before a Federal Court a privilege of citizenship within the protection of the Fourteenth Amendment of the United States Constitution?

Negatived.

2. May a State prevent a person from practicing law before a Federal Court within that State unless he has been admitted to practice before the courts of that State?

Affirmed.

3. Is not the Act of April 28, 1899, P. L. 117, Section 1, as amended (17 P.S. Sect. 1608), unconstitutional?

Negatived.

II. HISTORY OF THE CASE

This is a suit in equity by the Committee on Unauthorized Practice of the Law of the Philadelphia Bar Association to restrain the defendant from practicing law.

The Complaint alleges that the defendant has not been duly admitted and qualified to practice law in a court of record of any county in this Commonwealth; that he is not

authorized to practice law in the City and County of Philadelphia; and that he has wrongfully engaged in such practice for a long period of time, in violation of law and to the injury of the public and legal profession.

The Answer denies any violation of law, averring that the defendant is admitted to practice in the United States Supreme Court, the Court of Appeals for the District of Columbia, the United States District Court for the Eastern District of Pennsylvania; and that it is therefore unnecessary for him to be admitted to practice in any Court of record of the Commonwealth in order to practice before these courts.

A hearing was held on December 6, 1956, and it was established that the defendant has not been admitted to practice in any court of record of the Commonwealth of Pennsylvania; that he maintains a law office at his home, 5713 Torresdale Avenue, Philadelphia, Pennsylvania, on the window of which appears the legend: Law Offices, "Stephen J. Kovrak, Tax Consultant"; that he has professional cards bearing his name, address, telephone number and the words "Attorney at Law, Proctor in Federal Taxation"; and that he negotiated with the Philadelphia Transportation Company during 1955 for the settlement of two accident cases.

The Trial Judge concluded as a matter of law that the defendant has been unlawfully practicing law in the Commonwealth, in violation of the Act of April 28, 1899, P. L. 117, as amended, and that he should be permanently enjoined from such activity.

The Decree Nisi entered on January 14, 1957, follows substantially the wording of the Statute, and is calculated,

inter alia, to interdict the defendant's right to practice law before any federal court or administrative agency wherever located.

On January 24, 1957, the defendant filed Exceptions to the Findings of Fact, Conclusions of Law and Decree Nisi of the trial judge; and, on April 1, 1957, the Court en banc dismissed these Exceptions in an opinion by the trial judge (Bok, P. J.).

Hence, this appeal.

III. ARGUMENT

A. THE APPELLANT'S ADMISSION TO PRACTICE LAW BEFORE THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA AND THE COURT OF APPEALS FOR THE THIRD CIRCUIT IS A PRIVILEGE OF CITIZENSHIP WITHIN THE PROTECTION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

(First Question Involved)

The United States Constitution provides in Section 1 of Article III that:

> "The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Appendix A

By the term "Judicial Power" is meant that power with which the Courts are to be clothed for the purpose of the trial and determining of causes. *Ex Parte Gist*, 26 Ala. 156, 162 (1855).

While the Congress may undoubtedly prescribe qualifications for the office of Attorney before the Federal Courts, the actual admission and exclusion of individuals is an exercise of judicial power. *Ex Parte Garland*, 4 Wall. 333, 378 (1867), citing *Ex Parte Lecombe*, 19 How. 9 (1857). The power to disbar an attorney is possessed by all courts which have an authority to admit attorneys to practice; but it can be exercised only for misconduct ascertained and declared by the judgment of the court appointed after opportunity to be heard has been afforded. *Ex Parte Robinson*, 19 Wall. 505 (1874), citing *Ex Parte Garland*, 4 Wall. 333 (1867).

> "The two judicial systems of Courts, the State judicatures and the Federal Judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. The Court's control over a lawyer's professional life derives from his relation to the responsibilities of a court. . . . Disbarment being the very serious business that it is, ample opportunity must be afforded to show cause why an accused practitioner should not be disbarred."
>
> *Theard v. United States*, 353 U. S. 281, 77 S. Ct. 1274, 1276.

"A State cannot exclude a person from the practice of law or from any other occupation in a manner

or for reasons that contravene the Due Process or Equal Protection Clauses of the Fourteenth Amendment."

Schware v. Board of Examiners of State of N. M., 353 U. S. 232, 239, 77 S. Ct. 752, 756.

Certainly the practice of law in a Federal court within a State is not a matter of the State's grace.

"Admission to practice in a State and before its Courts necessarily belongs to that State. Of course, legislation laying down general conditions of an arbitrary or discriminatory character may, like other legislation, fall afoul of the Fourteenth Amendment. . . . Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the Due Process Clause."

Schware v. Board of Bar Examiners of State of N. M., 353 U. S. 232, 77 S. Ct. 752, 761.

The evidence establishes that the Appellant has been admitted to practice before certain stated Federal Courts; and it therefore follows that he has a constitutional right to transact legal business in these courts wheresoever they may be situated. Inasmuch as the lower Court's action prevents the Appellant from earning a living by practicing law, and there is no rational connection with his fitness, capacity or right to engage in such lawful occupation, or even with his residence or office address, this deprivation has grave consequences; it assumes a power in the Commonwealth of Pennsylvania to discriminate among lawyers admitted to practice before the Federal Courts, de-

stroying the substance of that Federal right to practice for any lawyer who has not also joined or been admitted to a Bar of the State's Court.

B. THE ACT OF APRIL 28, 1899, P. L. 117, SECTION 1, AS AMENDED (17 P.S. SECTION 1608), IS UNCONSTITUTIONAL BECAUSE IT ENCROACHES UPON THE SOVEREIGNTY OF THE FEDERAL GOVERNMENT, THROUGH ITS COURTS ACTING UNDER CONSTITUTIONAL POWERS AND IN ACCORDANCE WITH AN ACT OF CONGRESS, TO ADMIT A PERSON TO PRACTICE LAW BEFORE A FEDERAL COURT WITHIN A STATE

(Second and Third Questions Involved)

Section 1 of the Fourteenth Amendment of the United States Constitution provides that:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law."

One of the privileges specifically held to belong to United States citizenship and within the protection of this amendment against restrictive legislation is the right to engage in business and to transact any lawful business. *Colgate v. Harvey*, 296 U. S. 404, 430 (1935).

By due process of law in the Fourteenth Amendment is meant a guaranty against any encroachment upon an

acknowledged right of citizenship by the legislatures of the State. *Munn v. Ill.*, 94 U. S. 113, 123, 124 (1877).

The Act of 1899, as amended, is unconstitutional as to the appellant because it abridges his privilege to transact lawful business in the Federal Courts; and the lower Court's action is illegal because its effect is to debar the appellant from the right to practice in a Court over which the Court below has no legal or territorial jurisdiction.

It would serve no useful purpose to review or comment upon any of the cases cited in the opinions of the lower Court, because they all deal substantially with the power of a State to prescribe the qualifications for admission to the Bar of its own courts, which is conceded, within the limits circumscribed by the United States Supreme Court in *Konigsberg v. State Bar of California*, 353 U. S. 252, 77 S. Ct. 722; *Schware v. Board of Bar Examiners of State of N. M.*, 353 U. S. 232, 77 S. Ct. 752; and *Theard v. United States*, 353 U. S. , 77 S. Ct. 1274.

But, this is not the issue in the case at Bar. Here the Appellant claims that he has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the Court of Appeals for the Third Circuit, within the Commonwealth of Pennsylvania, the jurisdiction of the Circuit Court extending beyond the borders of the Commonwealth; and that neither this State nor its Courts has the power or authority to negate that admission to practice law.

It is difficult to reconcile the rationale of the opinion of the lower Court en banc, in the face of a holding in 1939 by one of its members, Judge Levinthal, in a similar pro-

ceeding (*Blair et al. v. Motor Carriers Service Bureau, Inc. et al.*, 40 D. & C. 413), that a layman who was duly qualified to practice before the Interstate Commerce Commission under its rules may do so and may advise his own clients concerning matters within the Commission's jurisdiction.

And that:

> "A proper regard for the prerogatives of an important Federal administrative tribunal should prevent the issuance of an injunction restraining one from doing precisely that which a tribunal has seen fit to authorize him to do."
>
> *Blair et al. vs. Motor Carriers Service Bureau, Inc. et al.*, supra, p. 426.

Judge Bok has cited *Commonwealth v. Branthoover*, 24 C. C. 353, 48 Pitts. 267 (1901), to sustain the constitutionality of the Act of 1899, and to support the Court's power to issue an injunction against the appellant. It is submitted that the decision in that case neither sustains the constitutionality of the instant Act nor supports the power of the instant lower Court sitting in equity to issue an injunction. The *Blair* case deals with an indictment under the Act of 1899 for holding out as a practicing attorney in Westmoreland County. The record discloses that the defendant had held himself out as entitled to practice in the Federal and County Courts. Judge McDonnell, in charging the jury, stated that the Act was constitutional, and that its

> "Main scope and purpose is quite obvious, namely, to suppress the fraudulent or false misrepresentation of any person practicing as an attorney, that he is properly qualified so to do."

And that

> "The question of whether the defendant may have the right to practice in the United States Courts is a matter that cuts no figure in the disposition of this case. This Act is not aimed at any qualifications for admission to the courts to the United States. It is aimed at persons representing that they have the qualifications to practice law in the courts of this Commonwealth, when in truth and fact have not been admitted to practice in such courts."

Obviously, this is a penal statute and the Court's holding of its constitutionality in the *Branthoover* case specifically adverted only to the defendant's false claim of the right to practice law in the county courts of Westmoreland County, and not to the Court's right to exclude the defendant from practicing in the Federal Courts.

IV. CONCLUSION

Admission to practice in a State and before its Courts necessarily belongs to that State. But, under no circumstances may a State or its Courts exclude a person for the practice of law before a Federal Court within that State. Such an act is without sanction of law and contravenes the Constitution of the United States.

For these reasons, the Decree below must be reversed.

Respectfully submitted,

FILINDO B. MASINO,
Attorney for Appellant.

1420 Walnut Street,
Philadelphia 2, Pa.

Appendix A

It is hereby certified that the cases cited herein from other than the official State and Superior Court Reports are not contained therein.

FILINDO B. MASINO.

APPENDIX B

UNITED STATES DISTRICT COURT ADMISSIÓN RULES: QUALIFICATION IN LOCAL STATE REQUIRED (PARTIAL LIST)

State or Territory	*District*	*Rule*
Alabama	Southern District	Rule 1
Alaska	District of Alaska	Rule 3 (b)
Arizona	District of Arizona	Rule 1 (a)
Arkansas	Western District	Rule 1 (a)
California	Southern District	Rule 1 (b)
Colorado	District of Colorado	As per letter of Clerk, 6/26/58
Delaware	District of Delaware	Rule of Court of July 10, 1942
Florida	Southern District	As per letter of Clerk, 6/26/58
Georgia	Southern District	As per letter of Clerk, 7/1/58
Georgia	Northern District	Rule 2
Georgia	Middle District	As per letter of Clerk, 6/24/58
Illinois	Southern District	Rule 1 (a)
Iowa	Southern District	Rule 1
Iowa	Northern District	Rule 1
Kansas	District of Kansas	Rule III
Kentucky	Western District	Rule 2 (a)

State or Territory	*District*	*Rule*
Louisiana	Western District	Rule 2 (a)
Louisiana	Eastern District	Rule 1 (b)
Massachusetts	District of Massachusetts	Rule 2
Michigan	Eastern District	Rule I (1)
Michigan	Western District	Rule 2 (c)
Minnesota	District of Minnesota	Rule 1 (b)
Missouri	Western District	Rule 1 (b) (d)
Missouri	Eastern District	Rule II (a)
Nebraska	District of Nebraska	Rule 8
Nevada	District of Nevada	Rule of April 26, 1941
New Hampshire	District of New Hampshire	Rule 1 (2)
New Jersey	District of New Jersey	Rule 2 (B)
Pennsylvania	Western District	Rule 1 (b)
Texas	Southern District	Rule 5
Virginia	Western District	Rule (3)
Virginia	Eastern District	Rule 9
West Virginia	Southern District	Rule 1 (a)
West Virginia	Northern District	As per letter of Clerk, 6/27/58
Wisconsin	Western District	Rule 1 (a)
Wyoming	District of Wyoming	Rule 4

APPENDIX C

UNITED STATES DISTRICT COURT ADMISSION RULES: QUALIFICATION IN LOCAL STATE NOT REQUIRED (PARTIAL LIST)

State or Territory	*District*	*Rule*
Alabama	Middle District	As per letter of Clerk, 6/28/58
Alabama	Northern District	As per letter of Clerk, 6/26/58
Connecticut	District of Connecticut	Rule 1 (a) [1]
Hawaii	District of Hawaii	Rule 1 (b)
Idaho	District of Idaho	Rule 1 (a)
Illinois	Northern District	Rule 6 [2]
Indiana	Northern District	Rule 1 (b)
Indiana	Southern District	Rule 1 (b)
Maine	District of Maine	Rule 2
Maryland	District of Maryland	Rule 2
Mississippi	Northern District	As per letter of Clerk, 6/28/58
Mississippi	Southern District	Rule I (b)
Montana	District of Montana	Admission Rule
New York	Northern District	Rule 2 (c)

[1] Admission of members of bars of District Courts of First and Second Circuits.

[2] Admission of members of District Courts and Supreme Courts of Indiana and Wisconsin if reciprocity by such District Courts.

State or Territory	*District*	*Rule*
New York	Southern District	General Rule 3 (a) [3]
New York	Eastern District	General Rule 3 (a) [3]
New York	Western District	Rule 2 (a)
New Mexico	District of New Mexico	Rule 3 (a)
North Carolina	Middle District	As per letter of Clerk, 6/27/58
North Carolina	Western District	As per letter of Clerk, 6/24/58
North Dakota	District of North Dakota	Rule 1 (b)
Ohio	Northern District	Rule 1. B
Ohio	Southern District	Rule 1. B
Oklahoma	Northern District	Rule 4 (b)
Oklahoma	Western District	Rule 4 (b)
Pennsylvania	Middle District	Rule 1
Puerto Rico	District of Puerto Rico	Rule 1 (b)
South Carolina	Eastern District	Admission Rule
South Dakota	District of South Dakota	Rule 1, Sec. 1
Texas	Eastern District	General Rule No. 2
Texas	Northern District	Admission Rule
Texas	Western District	Rule 2 (a)
Vermont	District of Vermont	Rule No. 1 [4]
Washington	Western District	Rule 2
Washington	Eastern District	Rule 1 (a)

[3] Admission of members of District Courts and state courts of New Jersey, Connecticut and Vermont if reciprocity by such District Courts.

[4] Admission of members of bars of District Courts of First and Second Circuits.

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
RESIDENT COUNSEL RULE

"Except where a party conducts his own case, no bill or other pleading and no notice required to be signed by counsel shall be accepted by the clerk unless it is signed by a solicitor who shall have been admitted to practice in this court, who shall be a resident of and shall maintain an office in this district, and who shall have entered his appearance of record in the case with the address in the district where notice can be served. This appearance shall not be withdrawn without leave of court. Service of notices, rules, and pleadings on such resident solicitor shall be equivalent to service on the parties for whom he has appeared. Where a party is conducting his own case, he shall file with the bill or other pleading a memorandum of one address within the district where notice can be served."

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1958.

No. 266.

STEPHEN J. KOVRAK,

Appellant,

v.

S. REGEN GINSBURG, Chairman, ROBERT F. LEHMAN, GEORGE P. WILLIAMS, III, Individually and as members of the Committee on Unauthorized Practice of the Law, acting for, on behalf of and by authority of the Philadelphia Bar Association,

Appellees.

On Appeal From the Supreme Court of Pennsylvania, Eastern District.

MOTION TO DISMISS APPEAL.

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MOTION TO DISMISS.

Appellees, pursuant to Rule 16 of the Revised Rules of this Court, move to dismiss the appeal of Stephen J. Kovrak on the grounds that (a) the appeal does not present a substantial federal question and (b) the federal questions sought to be reviewed were not raised in or passed upon by the state courts.

Statement of the Case.

The case under consideration is an appeal from the final order of the Supreme Court of Pennsylvania affirming the decree of the Court of Common Pleas of Philadelphia County, which enjoined the appellant from practicing law, and holding himself out to the public as entitled to practice law in Philadelphia County. The Pennsylvania Supreme Court specifically construed the injunctive decree as prohibiting only the maintenance of an office and the practice of law in Philadelphia County, and as not affecting Appellant's right to practice elsewhere or to try cases in the United States District Court for the Eastern District of Pennsylvania or in any federal court or jurisdiction where he is entitled to practice.

The appellant admitted, by his Answer to the Complaint filed against him that he had engaged in the general practice of law in Philadelphia County, without having become admitted to practice law in any court of record of Pennsylvania. The appellant's sole defense was that he had been admitted to practice in the United States District Court for the Eastern District of Pennsylvania, whose territorial jurisdiction includes Philadelphia.

He gained this status by virtue of the local rules of that court, which deem admitted to practice before it those who are admitted to practice in the United States Supreme Court, and also admits to practice those previously admitted in the Supreme Court of a state. Appellant is admitted to practice in the District of Columbia, the United

States Court of Appeals for the District of Columbia, and the Supreme Court of the United States.

The findings of the court of first instance, the Common Pleas Court No. 6, of Philadelphia County, are that the appellant maintained an office for the practice of law in Philadelphia; that his window carried the words, "Law Offices, Stephen J. Kovrak, Tax Consultant"; that his professional card carried his name, address, telephone number, and the words, "Attorney at law, Proctor in Taxation"; that he held himself out to the public *in Philadelphia County* as entitled to practice law *in that county;* that he was listed as an attorney in the Philadelphia telephone book and also in a legal directory; and that his stationery carried his name, address, telephone number and the words, "Law Offices". In at least two accident cases, he entered into legal negotiations with the Philadelphia Transportation Company; he actually tried an accident case in the federal district court.

Nowhere in the record does it appear that appellant in any way attempted to qualify the scope of his activities as an attorney in Philadelphia County. Rather, the facts clearly show that he held himself out in Philadelphia County as an attorney at law and engaged in that County in the practice of law generally.

In the Common Pleas Court, the appellant took the position that, because he was admitted to practice in the local federal district court, he was entitled to practice law anywhere within the Eastern District of Pennsylvania with regard to any legal matter in which a *federal question* was involved, no matter how remote.

In the Supreme Court of Pennsylvania, the appellant contended [1] that the injunction issued by the Common Pleas Court was illegal as an attempt to prevent him from practicing in the federal court to which he had been admitted. The Pennsylvania Supreme Court construed the injunction

1. See Statement of Questions Involved, Appendix A in Appellant's Jurisdictional Statement, p. 57.

as not restricting the appellant from practicing in any court to which appellant was admitted, and sustained the injunction as prohibiting him from holding himself out in Philadelphia County as entitled to practice law in Philadelphia County. Concededly, appellant never applied for admission nor was he ever admitted to practice law under Pennsylvania law.

I. The Federal Questions Presented Are Not Substantial.

The appellant does not challenge the power of a state to specify requirements for admission to practice law within its jurisdiction. (Jurisdictional Statement, p. 18). In any event, it is clear from the decisions of this Court that the admission of attorneys to practice law is subject to state control. *Bradwell v. Illinois,* 16 Wall. (83 U. S.) 130; *In re Lockwood,* 154 U. S. 116; *Yeiser v. Dysant,* 267 U. S. 540; cf. *Schware v. Board of Examiners,* 353 U. S. 232, 239.

Moreover, appellant does not draw into question the validity of Pennsylvania standards for admission to the bar, since he does not seek to become a member of the Pennsylvania bar.

In these circumstances, it is submitted that appellant's assertion that the law of Pennsylvania sets up an arbitrary and unreasonable classification is without any semblance of legal color.

The gravamen of appellant's case is an asserted conflict between federal and state control. But this asserted conflict is not real in the circumstances of this case.

Although the appellant contends the Pennsylvania statute (Act of April 24, 1933, P. L. 66, Sec. 1, 17 P. S. Sec. 1608) is unconstitutional, in fact that statute is not directly involved. In Pennsylvania, admission to the bar is governed by the Rules of the Pennsylvania Supreme Court. The statute does not purport to establish such rules. Its purpose and effect is to implement the Rules by making it a misdemeanor for anyone to practice law or hold himself

out to the public as being entitled to practice law in any county in Pennsylvania without having first been admitted to practice in a court of record of any county in the Commonwealth in accordance with regularly established rules governing such admissions.

The appellant has not been convicted of violating the statute. Rather, the Common Pleas Court, in the exercise of its equity jurisdiction, has issued an order, tailored to the facts of this case, enjoining the appellant from engaging in the general practice of law in Philadelphia County. Appellant has no quarrel with the statute: his quarrel is with the injunction decree. cf. *Zucht v. King,* 260 U. S. 174.

Appellant's basic contention, that the injunction interferes with his federal rights or privileges, rests solely upon the local rules of United States District Court for the Eastern District of Pennsylvania, which rules he asserts are authorized by the congressional mandate expressed by the Act of September 24, 1789, ch. 20, sec. 35, 28 U. S. C. Sec. 1654. These rules (Appellant's Jurisdictional Statement at pages 7 and 71) provide for the admission in that court of those lawyers who are members of the bar of the United States Supreme Court or of the Supreme Court of any state. Appellant construes 28 USC Sec. 1654 as legislative authorization to the federal judiciary to provide a comprehensive procedure to qualify persons for the practice of "federal law"—whatever the phrase "federal law" may mean.

It is not necessary to determine either the question whether in fact the Congress purported to bestow this power upon the judiciary or whether such power reposes in the judiciary independent of legislative pronouncement, for this Court has stated that the federal courts have not sought to exercise such power but have looked to the courts of the several states to determine the standards and procedures relating to attorney qualifications. *In Re Isserman* 345 U. S. 286. The decisions of various state tribunals in the dual admission cases have reflected the attitude of this

Court in this respect. *N. Y. County Lawyers Association v. Bercu,* 273 App. Div. 524, 78 N. Y. S. 2d 209; *Petition of Kearney,* (Fla.) 63 So. 2d 630; *Chicago Bar Association v. Kellogg,* 401 Ill. 375, 82 N. E. 2d 639; cf. *In re Roel,* 165 N. Y. S. 2d 31, 144 N. E. 2d 24, appeal dismissed 355 US 604.

It is submitted that the decision of the Supreme Court of Pennsylvania is in harmony with the various state court decisions and with *Isserman* as well.

Moreover, the appellant's position presupposes specific interpretations of the injunction and the federal rules which have not been made by the courts involved. It is submitted this Court should not make such interpretations initially in order to *create* an issue within its jurisdiction.

First, the Pennsylvania Supreme Court has construed the injunction so as to prohibit the appellant, in view of his failure to comply with the conditions of admission to practice, from doing that which the state has an unquestioned right to regulate. The Pennsylvania Supreme Court has expressly held that the injunction does not affect appellant's right to appear in the federal courts or any other court to which he is admitted. Although appellant contends that he is enjoined from receiving mail, interviewing witnesses or preparing for trial in the federal court, this is his own interpretation of the decree; no such problem of interpretation was presented to or passed upon in the courts below. It is patent that the Pennsylvania courts did not intend their decree to conflict with appellant's federal privileges.

Second, the appellant attempts to construe the local federal rules so broadly that they would constitute a conduit for transfer of the attorney's license from one state to another in disregard of admission requirements.

It is inexorable logic that if appellant, on the basis of his admission in the United States District Court for the Eastern District of Pennsylvania, may practice law generally anywhere within that court's territorial jurisdiction, his admission to the Court of Appeals for the Third Circuit

entitles him to practice anywhere in Pennsylvania, New Jersey, Delaware and the Virgin Islands; and, indeed, his admission to this Court entitles him to practice law anywhere in the United States.

It is respectfully submitted that no such construction is intended by the federal district courts of their rules. As stated, in the matter of admissions of attorneys, federal courts traditionally follow the state courts. *In re Isserman, supra.* The federal district courts have extended to attorneys the privilege of practicing before them as a part of their practice in the states where they are admitted, not as a means to avoid state qualification. This is evidenced, as in the case of the United States District Court for the Eastern District of Pennsylvania, by a rule which requires local counsel of record in all cases (Appellant's Jurisdictional Statement, page 71).

The significant fact for the purposes of this appeal is that no federal court has construed its admission rules to achieve the result the appellant seeks here. At least one federal court has interpreted its rule, similar to the rule of the District Court for the Eastern District of Pennsylvania, contrary to the appellant's contention, and in accord with the position of appellees. In *Piorkowski v. Arabian American Oil Co.*, 131 F. Supp., 553 (S. D. N. Y., 1955), the district court specifically held that its rule requiring "local" counsel of record meant counsel who maintained an office in the community *pursuant to state law.* That court refused to recognize an "office" which New Jersey attorneys maintained in New York City to receive papers, etc., on the ground that such office was not validly maintained under New York law. This decision plainly follows the federal policy, to support rather than to overcome regulation of the practice of law by the local community in which the federal court sits.

The appellant has not shown even an apparent conflict between the injunctive order and the local federal court rules. If any doubt remains, it is respectfully submitted

that the scope of the privilege granted by the local federal court should be declared by that court initially, and no substantial federal question arises until that court construes its own intimate rule so as to conflict directly with the decree here on appeal.

II. The Questions Sought to Be Reviewed Were Not Raised in or Passed Upon by the Pennsylvania Supreme Court.

The question presented by appellant on this appeal is whether the injunctive decree of the state court validly, under the constitution and laws of the United States, restrains him from (a) maintaining an office and holding himself out in Philadelphia County as an attorney to practice law before the United States District Court for the Eastern District of Pennsylvania and (b) maintaining an office in Philadelphia County where he may be served with notices, rules and pleadings, take testimony and depositions and perform other functions relating to the discharge of his business in the said United States District Court.

However, this is not the question presented to the state courts.

In the Common Pleas Court, the appellant took the position that by virtue of his admission in the federal district court in Philadelphia he was entitled to practice law anywhere within the territorial jurisdiction of that federal court (which includes Philadelphia County) with regard to any legal matter in which a federal question was involved, no matter how remote. (Appellant's Jurisdictional Statement, pages 12, 37-38). The Common Pleas Court regarded this an unrealistic dichotomy, and certainly it seems self evident from the nature of the jurisdiction of federal district courts that admission to practice in them is unrelated to the types of law an attorney may practice. In effect, the appellant proposed to and did engage in the general practice of law in Philadelphia County, and this activity was enjoined.

In the Pennsylvania Supreme Court, the appellant took the position that the injunctive decree abridged his privilege

to transact lawful business in the federal district court located in Philadelphia County. (Appellant's Jurisdictional Statement, pages 14, 59 et seq.). That Court construed the decree to apply only to the practice of law by appellant in Philadelphia County, without affecting his right to practice law in the District of Columbia or to engage in the trial of cases in the federal district courts to which he is admitted.

To the extent appellant seeks to have this Court pass upon his right or privilege to practice law generally in Philadelphia County by virtue of the admission to the United States District Court for the Eastern District of Pennsylvania, he is raising an issue not presented to or passed upon the Supreme Court of Pennsylvania.

To the extent appellant seeks to have this Court pass upon whether the injunctive decree proscribes an office to receive papers, take testimony and depositions and to prepare for the trial of any matter he may have in the local federal court, he is raising an issue concerning the interpretation of the decree not presented to or passed upon by the Supreme Court of Pennsylvania.

Conclusion.

This appeal must be dismissed because it does not present a substantial federal question.

Regulation of the right to practice law within a state is a matter for the state. Appellant has not applied for admission to the bar of Pennsylvania, and accordingly the decree enjoining him from practicing law in Philadelphia County is proper. Appellant attempts to create a federal issue involving supremacy by interpreting both the decree and the rules of the local federal court so that they conflict. His interpretations are not supportable, but in any event it is submitted that this Court should not adopt appellant's construction, in the absence of declarations by the lower court herein involved, in order to create jurisdiction; certainly the meaning of the intimate rules of the local federal court should be declared by it in the first instance.

In any event, the issues presented to this Court were not presented to or passed upon in the Supreme Court of Pennsylvania.

It is respectfully urged in behalf of the appellees from all the foregoing that this appeal be dismissed.

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No. 266

IN THE
Supreme Court of the United States

October Term, 1958

STEPHEN J. KOVRAK,
Appellant

v.

S. REGEN GINSBURG, Chairman, ROBERT F. LEHMAN, GEORGE P. WILLIAMS, III, Individually and as members of the Committee on Unauthorized Practice of the Law, acting for, on behalf of and by authority of the Philadelphia Bar Association,
Appellees

On Appeal from the Supreme Court of Pennsylvania, Eastern District.

BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

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BRIEF IN OPPOSITION TO MOTION TO DISMISS

Appellant, pursuant to Rule 16 of the Revised Rules of this Court, opposes appellees' Motion to Dismiss his appeal.

I. The Motion To Dismiss Incorrectly States the Case

The Motion states that appellant claims the right to practice law generally in Pennsylvania. Appellant has never claimed this, as an examination of the record will show. (See Appellant's Answer, Jurisdictional Statement, page 32. See Question 2 in Appellant's Brief on appeal to Supreme Court of Pennsylvania, *ibid.*, page 57.) Appellant claims the right to practice in the federal district court to which he is admitted, with the necessary incident of having an office therefor in the city where that court is located.

The Motion on page 2 thereof states: "Nowhere in the record does it appear that appellant in any way attempted to qualify the scope of his activities as an attorney in Philadelphia County." The record shows this statement to be incorrect. (See Jurisdictional Statement, pages 9 to 11.)

II. The Motion To Dismiss Neither Shows Nor Argues Insubstantiality of Federal Questions Presented

The Motion fails to show any lack of a substantial federal question. It does not state that the federal questions presented by appellant lack substantiality; rather, it argues that the substantial federal questions which appellant has presented have already been settled. It thus as-

sumes as already resolved in its favor the very point to be decided, while doing nothing to overcome appellant's arguments as to substantiality. (See Jurisdictional Statement, pages 18 through 25 and 67 through 70.) For example:

On page 2 of the Motion this statement is made: "[*Appellant*] *actually tried an accident case in the federal district court.*" This is the very point at issue on this appeal: is it not precisely his admission to that court which gives appellant the right to try an accident case—or any other case—in the *federal district court?* This statement highlights the very view against which appellant contended in the Court of Common Pleas and in the Pennsylvania Supreme Court, namely, the view that his federal license is no true license and in fact merely a species of state license.

On page 3 of the Motion this statement is made: "In any event, it is clear from the decisions of this Court that the admission of attorneys to practice is subject to state control". Appellant's very contention is that admission of attorneys to practice *in the federal courts* is not subject to state control. As to this precise point, the cases cited by appellees on page 3 of the Motion are not authority.

Similarly, appellees on pages 4 through 7 utilize the form of a Motion to Dismiss not to present arguments showing lack of substantiality but to argue the very merits of the case.

III. The Motion To Dismiss Erroneously States That the Pennsylvania Statute Is Not Directly Involved

This statute (Act of April 28, 1899, as amended by Act of April 24, 1933, P.L. 66, Sec. 1, 17 P.S. 1608) is directly involved. In fact, it constituted the basis of appellees'

Complaint (see Jurisdictional Statement, page 26) which alleged as its ninth paragraph: "9. The defendant has practiced law in violation of the Act of April 28, 1899, P.L. 117, Section 1, as amended (17 P.S. 1608)." The constitutionality of this statute as applied to appellant was attacked by him in the Court of Common Pleas and upon appeal to the Pennsylvania Supreme Court, and both of those courts held that the statute applied to appellant and ruled specifically upon its constitutionality.

IV. The Questions Sought To Be Reviewed Were Both Raised in and Passed Upon by the Pennsylvania Supreme Court

In appellant's Brief on appeal to the Supreme Court of Pennsylvania his Question 2 in "Statement of the Questions Involved" was: "May a State prevent a person from practicing law before a Federal Court within that State unless he has been admitted to practice before the courts of that State?" (Jurisdictional Statement, page 57.) The Court of Common Pleas specifically ruled to the contrary. The Supreme Court of Pennsylvania affirmed. This is the precise question appellant raises in this Court. In order to establish a supposed difference between questions raised in the State courts and those raised on this appeal, the Motion to Dismiss resorts to a wholly artificial division of "practice of law" into two elements: (a) the trying of cases (b) the having of an office therefor. Appellees themselves refute this wholly unreal distinction in their own Complaint, Paragraph 8 of which alleges that appellant "has illegally and wrongfully engaged in the practice of law", immediately then particularizing activities allegedly constituting the same in subparagraphs. Subparagraph

"(e)" specified that the fact that appellant "maintains a law office" constituted the practice of law.

Conclusion

It is unfortunate that the Motion to Dismiss devotes itself to refuting arguments which appellant has never advanced and seeks to characterize him as an unauthorized practitioner. This is unfortunate since it involves not only the hitherto unassailed good name of an individual who achieved membership at the bar pursuant to bar examination and character examination, and who, in Philadelphia, the federal court has elected to designate by the name "attorney". This is unfortunate even more importantly because it beclouds the ultimate issue in this case, which is: *have the United States district courts independent power to admit attorneys to practice therein, or, as appellees maintain, does this power reside in the states?*

It is respectfully urged that the Motion to Dismiss be denied.

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